

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0352P

**Gross Income Tax
Calendar Year 1997**

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, an out of state corporation, has an Indiana location and is a wholly owned subsidiary of Company A. Taxpayer filed form IT-20SC for 1997 in error, and, as a result of the incorrect return being filed, the Indiana Department of Revenue refunded all "Estimated Payments " made by the taxpayer.

Taxpayer filed a penalty protest letter dated March 15, 2002.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that prior to September 28, 2001, it was a wholly owned subsidiary of Company A and their auditors prepared all tax returns. For 1997, Company A's auditors prepared the return using the incorrect form IT-20SC rather than the IT-20. The return was forwarded to Company A's headquarters where it was signed and mailed. Taxpayers relied on their paid preparer to properly prepare the appropriate tax return.

During 2001 when a sales tax audit was initiated, the issue with the 1997 income tax return was discovered. At the same time Company A was in negotiations with the management of the taxpayer to sell the company to its management. During the negotiations, Company A indicated it would take responsibility for resolving the 1997 tax issue since it was during its tenure as

owner and the mistake was made by its tax preparer. During the signing of the purchase agreement, Company A refused to include the 1997 taxes in the liabilities it retained. Taxpayer states that the new management has cooperated fully with the Indiana auditors in resolving this issue and requests a penalty waiver.

Taxpayer correctly prepared its 1998 and 1999 returns. The taxpayer erroneously prepared form IT-20SC for 1997 that was corrected during audit. The new managing company believes it should not be penalized when it was the responsibility of the old company to correctly prepare the returns. A company has the responsibility to assure that tax returns are properly filed, whether under new or old management.

FINDING

Taxpayer's protest is denied.